

U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh St., S.W. Washington, D.C. 20590

JAN 3 2003

Mr. James J. McNulty
Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Harrisburg, PA 17105-3265

Dear Mr. McNulty:

The Office of Pipeline Safety (OPS) has reviewed the Pennsylvania Public Utility Commission's (PA-PUC) Order dated November 7, 2002. The Order grants a time extension to natural gas distribution companies in the Commonwealth of Pennsylvania, to comply with the Federal Operator Qualification Regulations, 49 C.F.R. Part 192, Subpart N and Drug and Alcohol Testing Requirements, 49 C.F.R. Part 199 for plumbers working on customer-owned service lines in the Commonwealth of Pennsylvania. The Order extends the compliance time from October 29, 2002, to April 1, 2003.

In a September 18, 2002, response to an interpretation issued to the Public Utilities Commission of Ohio, OPS stated in its conclusion that, "The LDC, as the operator of the service line, is responsible for ensuring that the individuals performing these tasks are qualified in accordance with the operator qualification program required by § 192.805." OPS further stated in its interpretation that, "... a plumber hired by a gas customer to replace a customer-owned service line is performing a covered function on the LDC's system and is subject to the drug and alcohol regulations."

OPS agrees with the PA-PUC's conclusion that qualifying the number of plumbers in the Commonwealth of Pennsylvania may require additional time. Therefore, OPS has no objection to the Emergency Order granted by the PA-PUC.

Sincerely,
Stacey L. Gerard
Associate Administrator for Pipeline Safety

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265
HARRISBURG, PA 17105-3265

November 7, 2002

P-00021991

TO ALL PARTIES

In Re: Petition of the Energy Association of Pennsylvania ...

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on November 7, 2002 in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,
James J. McNulty
Secretary

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice-Chairman Aaron Wilson, Jr.
Terrance J. Fitzpatrick
Kim Pizzigrilli

In Re: Petition of the Energy Association of
Pennsylvania for an Emergency Order
Conditionally Granting an Extension for
Compliance with the Operator Qualification
Regulations (49 C.F.R. Part 192, Subpart N)
and Drug and Alcohol Testing Requirements
(49 C.F.R. Part 199) with Regard to Plumbers
Working on Customer-Owned Service Lines

Docket No. P-00021991

ORDER

BY THE COMMISSION:

We hereby ratify the Emergency Order issued on November 6, 2002, and incorporated herein at Attachment
"A"; **THEREFORE,**

IT IS ORDERED:

1. That the attached Emergency Order is hereby ratified.
2. That this Order shall be entered and served on the day it is adopted.

BY THE COMMISSION
James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 7, 2002

ORDER ENTERED: NOV 07 2002

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

In Re: Petition of the Energy Association of Pennsylvania for an Emergency Order Conditionally Granting an Extension for Compliance with the Operator Qualification Regulations (49 C.F.R. Part 192, Subpart N) and Drug and Alcohol Testing Requirements (49 C.F.R. Part 199) with Regard to Plumbers Working on Customer-Owned Service Lines

Docket No. P-00021991

EMERGENCY ORDER

BY THE COMMISSION:

On October 30, 2002, the Energy Association of Pennsylvania (Energy Association), acting on behalf of several of its natural gas distribution company members (NGDCs)¹ petitioned the Pennsylvania Public Utility Commission (Commission) to issue an Emergency Order. The Petition for the Emergency Order requests an extension of time, from October 29, 2002 until April 1, 2003, for Pennsylvania NGDCs to comply with federal operator qualification (OQ) regulations, 49 C.F.R. Part 192, Subpart N and alcohol and drug testing standards, 49 C.F.R. Part 199, as these regulations apply to plumbers working on customer-owned service lines. We are treating the Petition as an application to the Commission for waivers, pursuant to 49 C.F.R. §60118, in the form of extension of times until April 1, 2003, for Pennsylvania NGDCs to comply with federal operator qualification (OQ) regulations, 49 C.F.R. Part 192, Subpart N and alcohol and drug testing standards, 49 C.F.R. Part 199, as these regulations apply to plumbers working on customer-owned service lines.

The OQ regulations state, inter alia, that after October 28, 2002 every person who performs a covered task involving the operation or maintenance of a natural gas distribution system is qualified to perform the task and must be able to recognize and properly react to abnormal operating conditions. Each distribution company is responsible for maintaining records that document the qualification of each person performing these tasks on the system. Moreover, those who perform operation or maintenance tasks on natural gas distribution systems are subject to federal drug and alcohol screening regulations.

In a letter dated September 18, 2002 and attached to the Energy Association's Petition as Exhibit A, Richard B. Huriaux, P.E., Manager of Regulations of the United States Department of Transportation's Office of Pipeline Safety (OPS), informed the state of Ohio's Chief Gas Inspector that, in OPS' view, a plumber's work on a customer-owned service line is a covered task for purposes of the OQ rule, as well as OPS' drug and alcohol regulations. Although the letter was written to an official in Ohio, the cited federal regulations would be applicable to those Pennsylvania NGDCs with customer-owned service lines upstream of the meter.

The Energy Association's Petition notes that "[f]or natural gas utilities, 'service line' refers to the pipe that connects the main to an individual customer's meter. In most of the United States, service lines are owned, operated and maintained by the NGDC. In Western Pennsylvania and Ohio, however, it is common for service lines to be owned by the customer." See 49 C.F.R. §192.3 (defining "service line" as "a distribution line that transports gas from a common source of supply to (1) a customer meter or the connection to a customer's piping, whichever is further downstream...."). Thus, we are faced with a situation in Western Pennsylvania which does not exist in many other parts of the country.

¹The Petition asserts that the affected Pennsylvania NGDCs are Columbia Gas of Pennsylvania, Dominion Peoples, Equitable Gas and T.W. Phillips. See paragraph 4 of Petition. The Petition does not request that the waiver be limited to these NGDCs. Accordingly, we are applying the waiver uniformly across the Commonwealth to all NGDCs

The NGDCs have had less than a month and a half to act in accordance with OPS' September 18, 2002 letter (Petitioner's Exhibit A). This makes the unlikely assumption that Pennsylvania NGDCs became aware of the letter on the day it was received by the state of Ohio. We are concerned that this time frame does not allow for the number of plumber certifications which will be needed to service the customers in the Commonwealth of Pennsylvania. The time frame renders it difficult, if not impossible, for NGDCs to certify plumbers as compliant with the above-cited OPS regulations.

The Commission's regulations on Emergency Orders contemplate that a clear and present danger to life or property exists. See 52 Pa. Code §3.1. The standard for emergency relief is similar to the standard required for interim emergency relief. *Big Apple Dinner Theater, Inc. v. Bell of Pennsylvania, Inc.*, 1993 Pa. PUC Lexis 91 (Order entered April 30, 1993). The standards considered in reviewing a request for a grant of interim emergency relief are 1) the right to relief is clear; 2) the need for relief is immediate; 3) irreparable injury will result if the petition is not granted; and 4) the relief requested is not injurious to the public. In this case, the legal requirement for extending the time for compliance with the regulation is clear. There is simply not enough time to certify the number of plumbers that are needed to service all of the natural gas customers who may need it.

The immediate enforcement of OPS' recent interpretation of these regulations also has the potential to cause an unjust and unreasonable result. With the onset of winter, there are a number of customers who may have service lines replaced by plumbers who are unaware of OPS' recent interpretations of these regulations. Just when the NGDCs are called upon to restore service, the NGDCs must either determine that the plumber(s) who did the work was certified and compliant or refuse to restore service. If a NGDC does otherwise, it risks the imposition of civil fines and/or criminal prosecution. On the other hand, if the NGDCs refuse to restore service, the customer may not be able to obtain gas until long into the winter season. This situation already exists. The Commission's Bureau of Consumer Services has received at least three complaints from NGDC customers who have found it difficult to have their service restored because of this regulation. The fact that consumers in the western part of Pennsylvania may have difficulty restoring their natural gas service during this time of year constitutes irreparable harm.

The Commission's gas safety division is certified to enforce OPS' gas pipeline safety regulations pursuant to 49 U.S.C. §60105(a).² The gas safety division enforces the federal regulations as interpreted by OPS. The waiver of federal pipeline safety regulations by state authorities is governed by 49 U.S.C. §60118(d). If the Commission grants an application for a waiver, the waiver is then submitted by the Commission to OPS. The Commission must give OPS written notice of the waiver at least 60 days before its effective date. 49 U.S.C. §60118(d). If OPS makes a written objection to the waiver, the waiver is stayed. *Id.* Thus, a waiver must be approved by both the Commission and OPS before it is effective.³ See Petitioner's Exhibit B and Petition, page 5, footnote 10. See also Accountable Pipeline Safety and Partnership Act of 1996, 49 U.S.C. §60118(d). For this reason the Commission's waiver is conditioned upon the approval of such waiver by OPS. **THEREFORE,**

IT IS ORDERED:

1. That Petitioner's request for an Emergency Order, waiving 49 C.F.R. Part 192 by extending the deadline for Pennsylvania natural gas public utilities to comply with federal operator qualification regulations (49 C.F.R. Part 192, Subpart N, as those regulations and standards apply to plumbers working on customer-owned service lines, from October 29, 2002 until April 1, 2003, is granted.
2. That Petitioner's request for an Emergency Order, waiving 49 C.F.R. Part 199 by extending the deadline for Pennsylvania natural gas public utilities to comply with federal alcohol and drug testing regulations, 49 C.F.R. Part 199, as those regulations and standards apply to plumbers working on customer-owned service lines, until April 1, 2003, is granted.

² The Commission's March 15, 2002 certification to OPS documents the Commission's adoption of 49 C.F.R. Parts 192 and 199.

³ OPS can approve a waiver by taking no action during the 60 day period or by issuing a letter of "no objection" anytime during the 60 day period. In the latter situation, the waiver becomes effective upon issuance of the OPS letter.

3. That this Emergency Order is conditioned upon the United States Department of Transportation's Office of Pipeline Safety's approval the waivers, or not objecting to them.

4. That the effective date of each waiver is the earlier of January 5, 2003 or the date this waiver is approved by the Department of Transportation's Office of Pipeline Safety.

5. That a copy of this Emergency Order shall be served on the Office of Pipeline Safety, all Commissioners, the Executive Director, the Secretary, the Office of Administrative Law Judge, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate and placed on the agenda for ratification at the next regularly scheduled public meeting of the Commission.

Glen R. Thomas
November 6, 2002

United States Senate
Washington, DC 20510-3804

December 6, 2000

Mr. Sean O'Hollaran, Director
Office of Congressional Affairs
U.S. Department of Transportation
Room 10408 (I-10)
400 Seventh Street, S.W.
Washington, DC 20590

Dear Mr. O'Hollaran:

Mr. Michael Love, a constituent of mine, has contacted my office regarding his concerns. Mr. Love is concerned with a new regulation issued by the Office of Pipeline Safety. In its interpretation of the regulation the agency found that despite the customer ownership and responsibility for the gas service line, that when for safety reasons, the line needed to be repaired, the plumber selected by the customer had to be certified to meet the gas distributions company's operator qualification regulations and the alcohol and drug testing standards. The interpretation by OPS went further in holding gas distribution companies financially and operationally responsible from a compliance perspective for these customer-selected plumbers. The energy Association is trying to comply with the new regulations and is not arguing against compliance, but is requesting a delay in the effective date until April 2003. The enclosed information is submitted for your consideration.

I would greatly appreciate your assistance in this matter and informing me of any action you are able to take on behalf of my constituents. Thank you very much for your kind attention to this matter and please respond to me at my **Philadelphia Regional Office**.

Sincerely,
Rick Santorum
United States Senate

Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, Pennsylvania 17102

Mr. Jeffrey Haberkern
State Director SE Pennsylvania
Office of Senator Rick Santorum
One South Penn Square, Widener Bldg.
Philadelphia, Pennsylvania 19107

Dear Mr. Haberkern:

We were successful in getting the waiver from the RUC. However, as their (PUC) waiver states, nothing is of value unless the federal Department of Transportation joins in permitting a delay to April 1, 2003.

Again, this is a new interpretation that was issued with less than a 30-day window for us, as private companies, to train, certify and monitor other non-related private employees that are being employed as independent contractors by our customers.

Thank you for all the help you can give us.

Cordially,
J. Michael Love
President and CEO

Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, Pennsylvania 17102

October 30, 2002

Honorable Glen R. Thomas, Chairman
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Emergency Order Request Natural Gas Industry

Dear Chairman Thomas,

We are filing this afternoon an emergency petition seeking to achieve Commission concurrence in the postponement of an effective date for compliance with newly issued guidelines on the qualifications and drug testing procedures to be applied to plumbers working on customer-owned natural gas service lines in Western Pennsylvania.

By way of background, in 96% of America the gas service line from the street to the gas meter is owned by the gas distribution utility. However, historically, Ohio and Western Pennsylvania had gas distribution systems constructed wherein the customer owned, maintained and was responsible for the gas service line that traversed their property. This "is not the case in either Central or Eastern Pennsylvania.

This difference is now one of distinction. The United States Department of Transportation's Office of Pipeline Safety (COPS) recently issued an interpretation of its regulations in response to Ohio's. PUC Gas Safety Engineer in which it was found that despite the customer ownership and responsibility for the gas service line, that when for safety reasons, the line needed to be repaired, the plumber selected by the customer had to be certified to meet the gas distribution company's operator qualification (OQ) regulations and the alcohol and drug testing standards. The interpretation by OPS went further in holding gas distribution companies financially and operationally responsible from a compliance perspective for these customer-selected plumbers.

The Western Pennsylvania Gas Distribution Utilities have endeavored to meet this new standard by actively seeking out plumbers, training them and testing for certification. In addition, we have sought to move the effective date of this pronouncement from October 28, 2002, to April 1, 2003, so that we could ensure there were sufficient certified, trained plumbers willing to be tested for drugs and alcohol in all service territories. Our requests for extension have yet to be positively addressed by gas safety personnel at the OPS or Pa PUC.

The sudden advent of colder temperatures has forced us to seek this emergency relief. Many gas customers, especially those on fixed or limited incomes, await the first experience of cold weather prior to asking for service to be reinstated. Some of these people live in older homes with older pipe which, if there are leaks discovered, prevent reinstatement until the repair work is undertaken, and now only a limited number of people will qualify for being properly trained, certified and tested, to assist these customers. This limited group of plumbers may take advantage of the high demand and their limited numbers to charge higher than normal installation rates.

We, as Natural Gas distribution Utilities, will be caught between compliance with federal and state gas safety regulation and Chapter 56 requirements to connect up customers in a timely fashion. Please recognize that a failure to comply with federal and state safety pipeline safety regulations brings civil and criminal penalties. We envision that we could become a victim of a tussle between the Commission's Office of Pipeline Safety and its Bureau of Consumer Services.

We are not seeking non-compliance, nor are we minimizing safety. We are, in essence, saying that you cannot test and train independent contractors (that we don't control or pay) in a month's time. We believe we can train and test enough plumbers by April 1, 2003, and therefore we are seeking a postponement of the effective date from October

28, 2002, to April 1, 2003.

We are not seeking to be difficult or to point blame. However, we are concerned that customers, especially low-income customers, may face either no heat or excessive plumbing charges if we don't timely address this situation.

The only enemy is time. All of our companies are attempting to avoid civil and criminal liabilities while providing service in a timely fashion.

We seek your help in obtaining an extension of time.

Cordially,
J. Michael Love
President & CEO

Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, Pennsylvania 17102

October 30, 2002

Mr. James J. McNulty Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

VIA HAND DELIVERY

Re: PUC Docket No. P-_____ : Petition of the Energy Association of Pennsylvania for an Emergency Order Conditionally Granting an Extension for Compliance with Operator Qualification Regulations (49 C.F.R. Subpart N) Drug and Alcohol Testing Requirements (49 C.F.R. Part 199) with Regard to Plumbers Working on Customer-Owned Service Lines

Dear Mr. McNulty:

The Energy Association of Pennsylvania (the "Energy Association") encloses the original and three copies of a petition urging the Commission to issue an emergency order conditionally granting an extension, until April 1, 2003, for compliance with the federal operator qualification ("OQ") regulations (49 C.F.R. Part 192, Subpart N) and alcohol and drug testing standards (49 C.F.R. Part 199), as those regulations and standards apply to plumbers working on customer-owned service lines. The compliance extension sought under this petition would be conditioned on the issuance of a similar compliance extension by the United States Department of Transportation's Office of Pipeline Safety ("OPS"). The Energy Association understands a Commission order per this petition is a prerequisite to seeking a compliance extension from OPS.

Immediate action on the attached petition is essential to lift a regulatory cloud that presently threatens service reconnection to natural gas households in Western Pennsylvania. With cold weather approaching, a number of these households are only now having plumbers replace their customer-owned service lines. Under an OPS letter decision that was issued on September 18th — but was not known to some of Pennsylvania's natural gas distribution companies (uNGDCs, until October 1st — any plumber who works on a customer-owned service line is subject to the OQ and drug and alcohol regulations, and responsibility for ensuring the plumber's compliance rests with the NGDC. The OQ regulations took effect yesterday, only weeks after Pennsylvania's NGDCs became aware of the September 18th ruling and with no adequate opportunity to qualify the number of plumbers involved.

OPS's September 18th letter raises a serious question when an NGDC is asked to restore service but there is no evidence the work was performed by a plumber who is OQ and drug and alcohol compliant. In at least two letters Pennsylvania's Chief Gas Safety Inspector clearly stated that his safety inspectors intend to enforce the September 18th ruling. This means, in effect, that an NGDC will be cited for violating state and federal regulations if it restores gas service to a customer who used a plumber that lacks compliance documentation. The utility is given a Hobson's choice: restore service, and face civil fines and criminal prosecution under the Pennsylvania Public Utility Code and the federal Natural Gas Pipeline Safety Act; or refuse to restore service, and face an irate customer in the midst of increasingly cold weather. If waivers from the Commission and OPS are not forthcoming, Western Pennsylvania NGDCs may be in the position of having to inform the Commission (and, in particular, the Bureau of Consumer Services) to brace itself for a wave of complaints from those who are without service as a result of OPS's September 18th ruling.

Concurrent with this filing, a courtesy copy of this petition is being mailed to the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff, and courtesy copies are being hand delivered to each of the five Commissioners. Beyond that, as contemplated by the Service of Documents rule at 52 Pa. Code § 1.51, the Energy Association will await instructions from your office regarding further service or notice of the enclosed petition.

Respectfully submitted,
Dan Regan
Vice President – Regulatory Affairs

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of the Energy Association of)
Pennsylvania for an Emergency Order)
Conditionally Granting an Extension for)
Compliance with the Operator)
Qualification Regulations (49 C.F. R.) Docket No. P-_____
Part 192, Subpart N) and Drug and)
Alcohol Testing Requirements (49 C.F.R.)
Part 199) with Regard to Plumbers)
Working on Customer-Owned Service Lines)

PETITION

Pursuant to Section 5.43 of the Commission's Rules of Administrative Practice and Procedure,¹ the Energy Association of Pennsylvania (the "Energy Association"), acting on behalf of several of its natural gas distribution company ("NGDC")² members, petitions the Commission to issue an emergency order conditionally granting an extension, until April 1, 2003, for Pennsylvania NGDCs to comply with the federal operator qualification ("OQ") regulations³ and alcohol and drug testing standards,⁴ as and to the extent those regulations and standards apply to plumbers working on customer-owned service lines. In support of this Petition, the Energy Association states as follows:

1. For natural gas utilities, "service line" refers to the pipe that connects the main to an individual customer's meter. In most of the United States, service lines are owned, operated and maintained by the NGDC. In Western Pennsylvania and Ohio, however, it is common for service lines to be owned by the customer. In these areas, when a service line needs to be replaced, the work is done by a plumber hired by the customer. Once the plumber's work is finished, the NGDC goes to the site to restore service.
2. Beginning yesterday (October 29, 2002), Pennsylvania's NGDCs became subject to the OQ regulations. These regulations specify, inter alia, that every person who performs a task involving the operation or maintenance of a natural gas distribution system must be competent to perform that task and must be able to recognize and properly react to abnormal operating conditions. Each NGDC is responsible for maintaining records that document the competence of each person performing one of these tasks on its system. Separately, those who perform operations or maintenance tasks on natural gas distribution systems are subject to federal drug and alcohol screening regulations
3. By letter dated September 18, 2002 (attached hereto as Exhibit "A"), Richard D. Hurlaux of the United States Department of Transportation's Office of Pipeline Safety ("OPS") wrote a letter informing Ohio's Chief Gas Safety Inspector that, in OPS's view, a plumber's work on a customer-owned service line is a covered task for purposes of the OQ rule as well as OPS's drug and alcohol regulations. As a result, beginning October 2• natural gas distribution utilities are responsible for ensuring that each. plumber that does this work satisfies the OQ regulations and the drug and alcohol standards.
4. Although the September 18th letter (also known as "the Hurlaux letter") was written solely to an official in Ohio, the letter eventually reached the four Pennsylvania NGDCs with customer-owned service lines — Columbia Gas of Pennsylvania, Dominion Peoples, Equitable Gas and T.W. Phillips.⁵ If the Hurlaux letter was going to apply to Pennsylvania, as it was to Ohio, these NGDCs would have only a few weeks to develop some means of achieving and documenting the OQ and drug and alcohol compliance of Whatever plumbers customers might hire to work on the customer-owned service lines connected to their systems. These utilities responded in two ways.

¹52 Pa. Code § 5.43.

²Defined in the Natural Gas Choice and Competition Act, see 66 Pa.CS. §§ 2803.

³49 C.F.R. Part 192, Subpart N.

⁴49 C.F.R. Part 199.

⁵The undersigned has been informed that some of these companies did not become aware of the Hurlaux letter until on or about October 1st.

5. First, these utilities began doing what they could to get at least some plumbers OQ qualified and to connect these plumbers with private firms that perform drug and alcohol testing and recordkeeping services. Through their extraordinary efforts, there will be at least some plumbers able to work on customer-owned service lines within the requirements of the Huriaux letter. Obviously, though, a few weeks is simply not enough time to train and credential all of the plumbers operating in Western Pennsylvania. Moreover, achieving compliance status for a relative handful of plumbers has the unfortunate effect of creating artificial scarcity, which invites an artificial run-up in the price for work on customer-owned service lines.

6. Second, the affected , Pennsylvania NGDCs approached the Commission, through Chief Safety Gas Inspector, Joseph T. Finnan, seeking whatever relief could be provided. At least one of these NGDCs questioned the applicability of the Huriaux letter, noting possible differences between Ohio and Pennsylvania as well as system-specific operational features (see letter of October 25, 2002, from Keith Swanton, T.W. Phillips Gas and Oil Co., attached hereto as Exhibit "B").⁶ At least two other NGDCs did not challenge the letter directly, but asked instead that enforcement be temporarily waived so the utilities could develop and implement means to bring the plumbers into compliance (see letter of October 11, 2002, from Peggy Landini, Columbia Gas of Pennsylvania, Inc., attached hereto as Exhibit "C," and letter of October 10, 2002, from Edward Nolan, Equitable Gas Company, attached hereto as Exhibit "D").

7. Mr. Finnan rejected these appeals, stating that he had talked with OPS, and "that OPS would not consider a waiver of this issue" (see letter of October 18, 2002, from Mr. Finnan to Peggy Landini, Columbia Gas of Pennsylvania, Inc., attached hereto as Exhibit "E," and letter of October 21, 2002, from Mr. Finnan to Edward Nolan, Equitable Gas Company, attached hereto as Exhibit "F"). In each of his letters, Mr. Finnan emphasized that in the absence of OPS action he could not support a waiver, and in one letter (Exhibit "E") Mr. Finnan noted that "the Gas Safety Division is required to enforce the OQ regulation and [the] interpretation [in the Huriaux letter] until such time as gas operators comply, OPS grants a waiver or revises the rule to grant an extension for compliance." The effect of Mr. Finnan's letters are clear: follow the Huriaux letter or risk citations carrying potential civil penalties of \$10,000 per day per violation under the Pennsylvania Public Utility Code,⁷ and the federal Natural Gas Pipeline Safety Act⁸.

8. With the first cold days starting to hit Western Pennsylvania, a number of customers who went without natural gas over the summer are now having their service lines replaced, and NGDCs are being called to go to these customers' premises to restore service. Beginning yesterday, however, the Huriaux letter and Mr. Finnan's responses have placed Western Pennsylvania's NGDCs in an untenable position whenever they visit a site and find no evidence that the service line work was performed by a plumber who is OQ and drug and alcohol compliant. If the NGDC restores service, it risks civil fines and criminal prosecution. On the other hand, if the NGDC refuses to restore service, it must face an irate customer in the midst of increasingly cold weather. If relief from the Huriaux letter is not forthcoming, the utilities may be in the position of having to inform the Commission (more particularly, the Bureau of Consumer Services) to brace itself for a wave of complaints from those who are without service as a result of the Huriaux letter. The need for immediate action is self-evident.⁹

9. In view of the foregoing, the Energy Association urges the Commission to suspend enforcement of the Huriaux letter until April 1, 2003. This is a necessary first step to obtaining complete relief, which must come from OPS.¹⁰

⁶Submitting this petition is not intended to, and should not be interpreted as, a waiver of any challenges that might be made as to the applicability or legal sufficiency of the findings articulated in the Huriaux letter.

⁷66 Pa.C.S. § 3301(c).

⁸49 U.S.C. § 60122(a)(1). Knowing violations of the Natural Gas Pipeline Safety Act may also result in criminal liability, see generally, 49 U.S.C. § 60123.

⁹This is particularly true to the extent these restorations are subject to Chapter 56 regulations requiring NGDCs to restore service by the end of the first full working day after a restoration request is received, 52 Pa. Code §56.191.

¹⁰As Mr. Finnan noted in one of his letters (Exhibit "E"), "The waiver process for the federal pipeline safety regulations involves the submission of a formal waiver request to the Pennsylvania Public Utility Commission Secretary's office to be voted on at a public meeting. If the Commission grants the waiver it then must be submitted to [OPS] for review where it will either be approved or rejected. In summation a waiver must be approved by both the PUC and OPS before it is granted." This petition is intended to handle the Commission's half of the procedure Mr. Finnan identified

10. The affected NGDCs have assured the undersigned that if they were given this suspension, they would use the time to develop and implement programs that would allow a substantial number of plumbers to satisfy the Hurliaux letter by the time the suspension is lifted. (In fact, these NGDCs have stated that they are open to submitting periodic progress reports on this during the suspension period.) Equally important, the suspension would get everyone — customers, plumbers, utilities, regulators and legislators — through this winter. Pennsylvania's Public Utility Commission defines March 31st as the last day of winter for purposes of protecting residential customers from service termination.¹¹ The same concern for maintaining Pennsylvanians' natural gas service through the winter warrants an April 1st suspension date here.

WHEREFORE, in view of the facts and arguments presented above, the Energy Association of Pennsylvania urges the Commission to issue an emergency order conditionally granting an extension, until April 1, 2003, for compliance with the federal operator qualification ("OQ") regulations (49 C.F.R. Part 192, Subpart N) and alcohol and drug testing standards (49 C.F.R. Part 199), as those regulations and standards apply to plumbers working on customer-owned service lines, subject to the issuance of a similar compliance extension by the United States Department of Transportation's Office of Pipeline Safety.

Respectfully submitted,
ENERGY ASSOCIATION OF PENNSYLVANIA
By: DAN REGAN
Vice President – Regulatory Affairs

DATED: October 30, 2002

¹¹52 Pa. Code § 56.100.

U. S. Department of Transportation
Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

September 13, 2002

Mr. Edward M. Steele
Chief; Gas Pipeline Safety Section
Public: Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 45215-3793

Dear Mr. Steele;

This is in response to your request of June 21, 2002, for interpretation of the applicability of the operator qualification regulations at 49 CFR part 192, Subpart N to individuals replacing customer-owned service lines.

In Ohio the operator of the system, usually the local gas distribution company (LDC), is responsible for operation and maintenance of all service lines, but the customer is responsible for replacement of failed customer-owned service lines. Usually, this replacement is performed by a plumber hired by the customer.

The LDC is responsible for complying with the gas pipeline safety regulations, including ensuring that all individuals performing covered tasks are fully qualified. The gas pipeline safety regulations at 49 CFR §192.801(b) define a covered task for purposes of operator qualification as one that 1) is performed on a pipeline facility, 2) is an operations or maintenance task, 3) is performed as a requirement of this part, and 4) effects the operation or integrity of the pipeline.

Question: When a plumber makes a replacement of the entire length of the customer-owned portion of the service line, is that plumber performing an operations and maintenance task, or is this similar to new construction?

Answer: The replacement of a service line with new pipe, whether by insertion or direct burial, is an operations and maintenance (O&M) activity that meets the "four part test" in §192.801(b). It is not new construction because it is designed to maintain the serviceability of an existing service line. In addition, major parts of the service line, such as meters and risers, are not usually replaced. The LDC, as the operator of the service line, is responsible for ensuring that the individuals performing these tasks are qualified in accordance with the operator qualification program required by §192.805.

Question: Does it make a difference in the method of replacement is by insertion?

Answer: No.

Question: Are plumbers who make the replacement to the customer-owned portion of the service line, as addressed in the above paragraph, subject to drug and alcohol regulations at 49 CFR Part 199?

Answer: Yes. The drug and alcohol regulations at 49 CFR Part 199 require operators of pipeline facilities to test covered employees for the presence of prohibited drugs and alcohol. Covered employee, employees, or individual to be tested is defined at §199.2 as "a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors." As noted above, in Ohio the operator of the system, usually the local gas distribution company (LDC) is responsible for operation and maintenance of all service lines, but the customer is responsible for replacement of failed customer-owned service lines. Therefore, a plumber hired by a gas customer to replace a customer-owned service line is performing a covered function on the LDC's system

and is subject to the drug and alcohol regulations.

If you have any further questions about the pipeline safety regulations, please contact me at (202) 366-4565

Sincerely,
Richard D. Hurlaux, P.E.
Manager, Regulations
Office of Pipeline Safety

October 25, 2002

Mr. Joseph Finnan
Gas Safety Division
Bureau of Transportation and Safety
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Dear Mr. Finnan:

T.W. Phillips Gas and Oil Co. (T.W. Phillip?) has come into possession of a letter from Richard D. Huriaux of the U.S. Department of Transportation ('D07) Office of Pipeline Safety to Edward M. Steele, Chief-Gas Pipeline Safety Section of the Public Utilities Commission of Ohio. A copy of the letter is enclosed.

Mr. Huriaux's letter states that replacement of an existing customer-owned service line with new pipe is an operations and maintenance function and meets the 'four part test' in 49 CFR 5192.801(b). Mr. Huriaux goes on to state that plumbers who perform such service line replacement work are performing 'covered tasks' and therefore subject to the both DOT operator qualification program and the drug and alcohol regulations. We believe that Mr. Huriaux's letter is not binding upon T.W. Phillips for the following reasons:

1. The inquiry from Edward M. Steele applies only to the unique statutory and regulatory environment in Ohio. Specifically, unlike Ohio, we do not believe that Pennsylvania gas utilities are responsible for 'operation and maintenance of customer-owned service lines. Accordingly, Mr. Huriaux's interpretation should not be applicable to operators in Pennsylvania.
2. The Final Rule for Operator Qualification [Federal Register, August 27, 1999 (Volume 64, Number 166, pp 46853-46867)] defines Tasks Performed on a Pipeline Facility as:

...an activity that is performed by an individual whose performance directly impacts the pipeline facility. An individual who works on a pipeline component that is physically .connected to the pipeline system .is performing work on a pipeline facility" and may be subject to the final rules, regardless of whether or not product is flowing through the pipeline. However, a person who repairs a pipeline system or appurtenance that has been removed from the system, would not be performing work on the pipeline, and therefore would not be performing a covered task. (OQ Final Rule V, C, 1) (Emphasis supplied)

T.W. Phillips does not allow plumbers, who are hired by its customers to install new or replace existing customer-owned service lines, to connect said service lines to T.W. Phillips' pipeline system. Nor do we permit persons who are not employees to perform any work on customer-owned service lines while they are connected to T.W. Phillips' pipeline system. In other words, a plumber works on a customer-owned service line only after the service line has been physically disconnected from our pipeline system.

3. The same policy applies to contractors who replace sections of T.W. Phillips' pipeline system. Such contractors work only on pipelines that are not connected to the pipeline system. All tie-ins and all subsequent operation and maintenance functions are performed by T.W. Phillips employees. The Final Rule itself draws a distinction between covered and non-covered tasks, according to when they are performed:

Certain tasks performed on pipeline facilities may be covered tasks when performed in the course of operation and maintenance activities, but may not be covered tasks in the course of other activities, For example, "welding" could be a covered task when performed as an operations and maintenance activity on a pipeline, such as when installing a weld-over sleeve to repair an anomaly. However,

"welding" is not a covered task under this subpart when performed during the fabrication of new installations, because this would not be an operations and maintenance task (0Q Final Rule V, C, 2)

A contractor's installation of a new or replacement main or service line for T.W. Phillips is not a covered task as defined by the Final Rule, since such pipelines are never connected to, and therefore not part of, T.W. Phillips' pipeline system until the contractor's work is complete and the tie-in procedure is completed by T.W. Phillips' employees. Work on new or replacement main or service lines is more analogous to fabrication as described above.

4. With regard to drug and alcohol testing, a plumber who is engaged by a customer of T.W. Phillips to replace an existing customer-owned service line is not a 'covered employee' as defined in 49 CFR §199.3. That section states that a covered employee may be "employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor A plumber hired by a customer to install a new customer-owned service line is not a direct employee of T.W. Phillips, is not a contractor engaged by T.W. Phillips, and is not an employee of a contractor engaged by T.W. Phillips. Such a plumber would not, therefore, fall under the definition of 'covered employee' in Section 199.3 and would not be subject to the drug and alcohol testing regulations at 49 CFR Part 199.

In light of the forgoing, T.W. Phillips does not consider the interpretation contained in Mr. Huriacas letter to be applicable to (i) pipeline construction or replacement work performed by contractors engaged by T.W. Phillips, or (ii) customer-owned service line construction or replacement work performed by plumbers engaged by customers of T.W. Phillips. Accordingly, T.W. Phillips does not intend to revise its Operator Qualification program or adjust its implementation of the applicable drug and alcohol regulations in response to Mr. Huriatas letter to the Public Utilities Commission of Ohio. If you have any questions or wish to discuss this matter, please contact me at 724-287-2751, extension 232.

Sincerely,
Keith A. Swanton
Vice President- Operations and Engineering

October 11, 2002

Mr. Joseph T. Finnan
PA Public Utility Commission
Bureau of Transportation and Safety
Gas Safety Division
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Mr. Finnan:

This letter is sent to request a temporary waiver of a portion of the Operator Qualification Rule (OQ), 49 CFR Part 192, Subpart N. The waiver we request pertains to the replacement of customer-owned service lines by third party plumbers and installers.

It has only recently come to our attention that the Office of Pipeline Safety issued a formal interpretation of the OQ Rule with respect to replacement of customer-owned service lines. That Interpretation, in a letter to the Public Utilities Commission of Ohio dated September 18, 2002, brought clarity to our responsibilities as an operator of a gas system relative to customer-owned service lines. However, the timing of the interpretation leaves us with inadequate time to plan and address the myriad of issues related to thousands of customers, plumbers and installers directly affected by this interpretation.

This request for a waiver specifically asks that you extend the required compliance date for qualification of plumbers and installers twelve (12) months, to October 28, 2003. Columbia will use that extension of time to work with interested parties to assure this issue is addressed effectively.

We welcome the opportunity to discuss this request with you.

Very truly yours,
Peggy Landini
General Manager, Operations

Equitable Gas
200 Allegheny Center mall
Pittsburgh, PA 15212

October 10, 2002

Mr. Joseph T. Finnan
PA Public Utility Commission
Bureau of Transportation and Safety
Gas Safety Division
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Mr. Finnan:

I am writing to request a waiver for the Operator Qualification Rule (OQ), CFR 49 Part 192, Subpart N, only as it pertains to the replacement of customer owned service lines by third party plumbers and installers.

On October 8, 2002, Equitable received an interpretation letter dated September 18, 2002, from the Office of Pipeline Safety, Research and Special Programs Administration., to the Public Utility Commission of Ohio (PLICO). In its interpretation, attached for your reference, OPS concludes that replacement of customer owned service lines is covered by the OQ rule and associated Drug and Alcohol provisions.

In Western Pennsylvania, thousands of plumbers and installers need to be qualified in order to comply with this interpretation. Like many other operators, we did not include customer owned service line replacement in our original OQ plaza as a covered task. We have, however, begun the process of notifying the plumbers and installers in our service territory of the pending regulatory requirements and have begun scheduling individual qualifications.

Accordingly, we ask two things. First, we respectfully request that you extend for a period of no less than one year the completion date for qualifying plumbers/installers to do the work. Second, we ask for your approval of this extension prior to October 28, 2002.

We are prepared to meet with you and discuss this request at length if you feel it is appropriate. Please contact Wes Soyster, Director, Engineering, with any questions you may have. Wes can be reached at 412-395-3381.

Very truly yours,
Edward M. M Nolan
Senior Vice President
Utilities Operations

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION AND SAFETY

October 18, 2002

Peggy Landini, General Manager Operations
Columbus Gas of Pennsylvania
650 Washington Road
Pittsburgh, PA 15228-2703

Re: Your letter of October 11, 2002
Operator Qualifications and Customer Service Lines

Dear Ms. Landini:

I have reviewed your letter and have spoken to the Office of Pipeline Safety. They have indicated that at this time they would not be disposed to grant any waiver for operator qualification of plumbers installing customer owned gas service lines. Consistent with their position I would be unable to support the requested waiver.

The waiver process for the federal pipeline safety regulations involves the submission of a formal waiver request to the Pennsylvania Public Utility Commission Secretary's office to be voted in at a public meeting. If the Commission grants the waiver it then must be submitted to the federal Office of Pipeline Safety for review where it will either be approved or rejected. In summation a waiver must be approved by both the PUC and UPS before it is granted.

Should you have any questions, please call me at 717-787.1061 or e-mail me at jfinnan@statepa.us.

Yours truly,
Joseph T. Finnan, supervisor
Gas Safety Division
Bureau of Transportation and Safety

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION AND SAFETY

October 21, 2002

Mr. Edward M. Nolan, Sr. Vice President, Utilities Operations
Equitable Gas
200 Allegheny Center mall
Pittsburgh, PA 15212-5352

Re: Your letter of October 10, 2002
Operator Qualifications for Plumbers

Dear Mr. Nolan:

I have reviewed your letter and have spoken to the federal Office of Pipeline Safety (OPS) concerning the issue of operator qualifications for plumbers installing customer service lines. OPS has indicated that they will not consider a waiver of this issue. That being the case, the Gas Safety Division cannot support your waiver request at this time,

A waiver of the pipeline safety regulations must be submitted to the Secretary of the Public Utility Commission for action at a public meeting. Should the Commission approve your request it must then be forwarded to OPS for their review and approval. If they do not approve then no waiver is granted.

While this issue has been discussed with several gas operators the Gas Safety Division is required to enforce the COQ regulation and this interpretation until such time as gas operators comply, OPS grants a waiver or revises the rule to grant an extension for compliance,

Should you have any questions, please call me at 717-787-1063 or e-mail me at Jfinnan@state.pa.us.

Yours truly,
Joseph T. Finnan, Supervisor
Gas Safety Division
Bureau of Transportation and Safety

Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, Pennsylvania 17102

EXTENDING OPERATOR QUALIFICATION REQUIREMENTS AND DRUG AND ALCOHOL TESTING TO PLUMBERS WORKING
ON CUSTOMER-OWNED SERVICE LINES

October 25, 2002

BACKGROUND

Operational: For natural gas utilities, "service line" refers to the pipe that connects the main (the pipe running down the street) to an individual customer's meter. In most of the United States, service lines are owned, operated and maintained by the local natural gas utility; however, in Western Pennsylvania and Ohio it is common for service lines to be owned by the customer. In these areas, when a service line needs to be replaced the work is done by a plumber hired by the customer. When the plumber's work is finished, the utility goes to the site to restore service.

Legal: Beginning next Tuesday (October 29, 2002) Pennsylvania's natural gas utilities will be subject to the federal Office of Pipeline Safety's "Operator Qualification" or "OQ" regulations. In general, these regulations specify that every person who performs tasks involving the operation or maintenance of a natural gas distribution system must be competent to perform these tasks and must be able to recognize and properly react to abnormal operating conditions. Each utility is responsible for maintaining records documenting the competence of all persons performing these tasks on its system. Separately, those who perform operations or maintenance tasks on natural gas distribution systems are subject to drug and alcohol screening pursuant to U.S. Department of Transportation regulations.

OPS LETTER

By letter dated September 18, 2002, (attached) Richard D. Hurliaux of the Office of Pipeline Safety (OPS) wrote a letter informing Ohio's Chief Gas Safety Inspector that, in OPS's view, a plumber's work on a customer-owned service line constitutes operations and maintenance activity on the natural gas distribution system. Accordingly, beginning October 29th the gas utility will be responsible for ensuring that each plumber that does this work satisfies the OQ regulations and the drug and alcohol standards.

PENNSYLVANIA UTILITIES' RESPONSE

The four affected Western Pennsylvania's utilities — Columbia Gas of Pennsylvania, Dominion Peoples, Equitable Gas and T.W. Phillips — became aware of the Hurliaux letter on or about October 1st, i.e., only three weeks before the operator qualification rules would take effect. The utilities responded in two ways.

1. The utilities started doing what they could to get at least some plumbers OQ qualified and to connect these plumbers with private firms that perform drug and alcohol testing and recordkeeping services. Through their extraordinary efforts, there will be at least some plumbers able to work on customer-owned service lines within the requirements of the Hurliaux interpretations. Obviously, though, three weeks is simply not enough time to train and credential all of the plumbers operating in Western Pennsylvania.
2. The utilities approached Pennsylvania's Chief Safety Gas Inspector, Joseph T. Finnan, seeking whatever relief he could provide. Some questioned the applicability of the letter, noting possible differences between Ohio and Pennsylvania (see attached letter from Keith Swanton, T.W. Phillips). Others did not challenge the letter's findings, but asked instead that enforcement be temporarily suspended so the utilities could develop and implement means to bring the plumbers into compliance. Mr. Finnan rejected these appeals, stating that he had talked with OPS, and That OPS would not consider a waiver of this issue' (see attached letter from Mr. Finnan).

ACTION IS NEEDED NOW

With the first cold days starting to hit Western Pennsylvania, a number of customers who went without service over the

summer are now having their service lines replaced. Starting Tuesday, however, a serious question will arise when the local utility is asked to turn the gas back on and there is no evidence that the work was performed by a plumber who is OQ and drug and alcohol compliant. In the attached letter, Mr. Finnan clearly states that his safety inspectors intend to enforce the interpretations contained in the Hurliaux letter, put differently, a utility will be cited for violating state and federal regulations if it restores gas service to a customer who used a plumber that lacks compliance documentation. The utility is given a Hobson's choice: restore service, and face civil fines and criminal prosecution under the Pennsylvania Public Utility Code and the federal Natural Gas Pipeline Safety Act; or refuse to restore service, and face an irate customer in the midst of increasingly cold weather. If relief from the Hurliaux letter is not forthcoming, the utilities may be in the position of having to inform the Pennsylvania Public Utility Commission, as well as state and federal legislative offices, to brace themselves for, a wave of complaints from those who are without service as a result of the Hurliaux letter.

WHAT THE UTILITIES NEED

We urge suspending enforcement of the Hurliaux findings until April 1, 2003. The affected utilities pledge that if they were given this suspension, they would use the time to develop and implement programs that would allow a substantial number of plumbers to satisfy the Hurliaux Interpretations by the time the suspension is lifted. (In fact, the utilities are amenable to submitting periodic progress reports on this during the suspension period.) Equally important, the suspension would get everyone — customers, plumbers, utilities, regulators and legislators — through this winter. Pennsylvania's Public Utility Commission defines March 31st as the last day of winter for purposes of protecting low-income customers from service termination. The same thinking warrants using April 1st here.